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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,153	12/20/2001	Paul T. Watson	BELL-0164/01331	3380

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EXAMINER

GRANT, CHRISTOPHER C

ART UNIT

PAPER NUMBER

2611

DATE MAILED: 06/06/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/028,153	WATSON ET AL.
Examiner	Art Unit	
Christopher Grant	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.	6) <input type="checkbox"/> Other: ____.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6-16, 18, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner et al. (Wagner, 5,761,602).

Considering claims 1, 16 and 19, Wagner discloses a method, a corresponding computer readable medium and system for content transmission network selection comprising:

a) identifying the content to be transmitted based on at least one transmission request (router 3 and/or distributor 5 identifies the content for the content to be delivered to client 2, for example whether the content is e-mail, alerts, notifications as disclosed at col. 4, lines 10-27);

b) determining whether to transmit the content using a broadcast network (6) and a bi-directional network (1) (telephone network, ISDN line, cellular modem, or bi-directional cable , see col. 5, lines 5-11 and col. 7, line 52 – col. 8, line 26) based upon at least one of the following:

- the characteristic of the request (the priority or type of the data, or the average client waiting time, col. 7, lines 59-61);
- the characteristic of the content (the size, col. 7, lines 60-61); and
- the characteristic of the broadcast or broadband network (bandwidth, col. 7, lines 59-60).

Claim 6 is met by the broadcast network comprising one of cable network, terrestrial or satellite network as described at col. 3, lines 40-43, col. 4, lines 14-16 and col. 4, lines 63-65.

Claim 7 is met by bi-directional cable network disclosed at col. 5, lines 5-11.

Claim 8 is met by the time at which the content is requested to be viewed (the average client waiting time) disclosed at col. 7, lines 59-61.

Claim 9 is met by the characteristic of the content (the size, col. 7, lines 60-61); and bi-directional cable network disclosed at col. 5, lines 5-11.

Claims 10 and 11 are met by the characteristic of the broadcast or broadband network (bandwidth, col. 7, lines 59-60).

Claims 12, 13, 18 and 21 are met by the notification of the transmission characteristics (the transmission network) disclosed at col. 8, lines 26-36.

Claims 14 and 15 are met by the transmission of the content on one of the broadcast network or broadband network at a time prior to the time or at the time at which the content is requested to be viewed at col. 8, lines 16-60.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-5, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner in view of Hsu (6,195,692).

Considering claim 2, Wagner discloses requesting content via broadband network.

However, he fails to specifically disclose transmitting a list of available content items over a broadband network and receiving from a broadband network requests for content items as recited in the claims.

Hsu discloses a method and corresponding system and computer product program comprising transmitting a list of available content items over a broadband network and receiving from a broadband network requests for content items for the advantage of providing a list of topics or various types of media for the client to select. See the entire reference including but not limited to figures 7, 8 and col. 8, line 43 – col. 10, line 23.

It would have been obvious to one of ordinary skill in the art to modify Wagner's system to include transmitting a list of available content items over a broadband network and receiving from a broadband network requests for content items, as taught by Hsu, for the advantage of providing a list of topics or various types of media for the client to select.

Considering claims 3-5, 17 and 20, Wagner discloses determining available bandwidth for the broadcast and broadband network for transmission. However, he fails to specifically disclose determining the cost for transmission of the broadcast and broadband networks as recited in the claims.

Hsu discloses a method and corresponding system and computer product program comprising transmitting content via broadcast and broadband networks based on bandwidth needs and usage cost for the advantage of providing the most efficient delivery of content to clients. See figure 12 and col. 15, line 32 – col. 16, line 16.

It would have been obvious to one of ordinary skill in the art to modify Wagner's system to include determining the cost for transmission of the broadcast and broadband networks, as taught by Hsu, for the advantage of providing the most efficient delivery of content to clients.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Porter et al. disclose two networks connected to a client.

6. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

## **Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Typed or printed name of person signing this certificate:

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## **Certificate of Transmission**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703) \_\_\_\_ - \_\_\_\_\_ on \_\_\_\_\_.  
(Date)

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\_\_\_\_\_  
Signature: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Grant whose telephone number is (703) 305 4755. The examiner can normally be reached on Monday-Friday 8:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone numbers for the

organization where this application or proceeding is assigned are (703) 872 9314 for regular communications and (703) 872 9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

  
Christopher Grant  
Primary Examiner  
Art Unit 2611

CG  
May 30, 2003